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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT

(Placer)

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THE PEOPLE,

Plaintiff and Respondent,

v.

ASHLEY AIMEE HALL,

Defendant and Appellant.

C070943

(Super. Ct. No. 72006290)

Defendant Ashley Aimee Hall pleaded no contest to felony child abandonment. (Pen. Code, § 271a.)<sup>1</sup> After substituting retained counsel for her appointed counsel, defendant filed a motion to withdraw her plea, which was denied. Pursuant to the plea agreement, the trial court placed defendant on five years' probation with 90 days in county jail and suspended the jail term on the condition that she speak to five community

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<sup>1</sup> Undesignated statutory references to follow are to the Penal Code. The Attorney General asserts defendant pleaded no contest to violating section 271, subdivision (a). Section 271 prohibits child abandonment but has no subdivision (a). A second crime of felony child abandonment is found in section 271a. The record shows defendant pleaded no contest to this offense.

organizations about her experience. Within one to two years, the trial court would consider reducing the offense to a misdemeanor pursuant to section 17, subdivision (b).

On appeal, defendant contends it was an abuse of discretion to deny her motion to withdraw the plea, and she received ineffective assistance of counsel in the entry of her plea. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The facts of defendant's crime are taken from the police report, which formed the factual basis of her plea.

On October 15, 2009, at around 4:11 p.m., a Placer County Sheriff's deputy was dispatched to Tahoe Vista to investigate a report of a four-year-old boy found wandering without adult supervision in the area of Toyon Road and National Avenue. The deputy arrived at 4:26 p.m., about 21 minutes after the dispatcher received the first call. A witness reported that he saw the child on the side of the road as he left his house. The boy appeared to be upset and crying; the witness could not locate the boy's mother, so he called the sheriff's department. The boy was with the witness and appeared to be healthy.

The boy's mother, defendant, arrived about 10 minutes after the deputy arrived at the scene, and about 31 minutes from the first call to the sheriff's department. She had driven to Tahoe City that day to pick up her daughter from day care. Her son had been feeling sick and complained that he did not want to go, so defendant left him at home while she went to pick up her daughter. She drove as fast as she could but was delayed by ongoing construction on Highway 28.

Defendant admitted to making a serious mistake. She showed worry and genuine remorse when she found out that her son had wandered out of the house.

The deputy estimated the average delay at the construction zone in Tahoe City was 10 to 20 minutes one way. Including driving time and the construction delay in both

directions, defendant could have been gone for an hour or more, and was absent for at least 31 minutes.

The interior of defendant's home did not show any obvious signs of neglect or danger to the children. The home was heated, clean, and organized, with food in the kitchen and appropriate clothing for the children. The children were left with defendant, and the matter was referred to family services intake, which did not send a case worker.

Defendant was initially charged with felony child endangerment. (§ 273a, subd. (a).) She completed an advisement of rights form for her plea to felony child abandonment. (§ 271a.) Defendant signed and dated the following box on the form: "Defendant's statement: I have read the front and back of this form. I have had enough time to speak with my attorney; I have told my attorney everything I know about this case; my attorney has explained to me my rights, my defenses and the possible consequences of my plea, including the consequences explained on the second page of this form.<sup>[2]</sup> I am entering this plea freely and voluntarily." Defendant's appointed trial counsel, Placer County Public Defender Barry W. Jones, signed and dated a statement that he had sufficient time to explain the case to his client, "including the elements of the crime, and I have advised him/her of his/her rights, defenses and the consequences of his/her plea."

The plea colloquy was conducted by Placer County Superior Court Commissioner Trilla E. Bahrke. Defendant admitted to going over the plea form. Without objection, the trial court amended the complaint to include a charge of felony child abandonment. After defendant entered a no contest plea to the child abandonment charge, defense counsel stipulated to the police report as a factual basis for the plea.

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<sup>2</sup> The second page of the plea form describes possible fines, the consequences of probation and violating probation, and other consequences of a criminal conviction.

Before sentencing, defendant substituted retained counsel and filed a motion to withdraw her plea. The motion asserted defendant was entitled to withdraw her plea because the facts stated in the police report did not establish her guilt on the original charge or the charge she pleaded to, the court did not admonish her that approval of the plea was not binding on the sentencing court, the court failed to insure an adequate factual basis for the plea, and trial counsel was ineffective in failing to inform her of the factual deficiencies of the People's case and the availability of several defenses.

Defendant, testifying at the hearing on her motion, said she met with Jones once at his office. She told Jones that the police report was accurate and that her son, who was not feeling well, said he would stay on the couch while she got his sister.

Defendant understood she was pleading to a charge that was not in the original complaint. She thought Commissioner Bahrke was a judge and did not know that a commissioner could reduce a felony to a misdemeanor. Jones told her he had discussed the possibility of a misdemeanor disposition with the prosecutor, who refused to reduce the charge.

She told Jones that a conviction for felony child endangerment would result in her losing her job. Jones suggested the alternative offense of child abandonment, but they did not discuss the elements of that crime. Pleading to child abandonment might have allowed her to save her job, which is why she pleaded to that charge. However, she was asked to resign as a result of her plea.

Jones told defendant that if she fought the case, things could get worse and her children could be taken from her. If she had known about available defenses, she would have rejected the plea and taken the case to trial. Defendant felt she was coerced, and Jones did not work in her best interests.

Jones, a public defender for 35 years, also testified. He met defendant several times at his office. Jones discussed the charges and went over the police report with

defendant, who told Jones that the police report “was basically accurate.” Jones also discussed the case with defendant each time they met at court for a hearing.

Jones asked the prosecutor to reduce the charge to a misdemeanor, but he was unwilling. He also discussed reducing the charge with the trial court, but the court was also unwilling to do so.

After researching the law, Jones determined that at trial the case would turn on whether the jury believed that the facts constituted child endangerment. Defendant and Jones discussed pleading to child abandonment. Defendant indicated that a conviction for child abandonment would “work for her employment.”

Jones told defendant she had the right to file a section 17 motion to reduce the charge to a misdemeanor and could take the case to trial. He told her the court was unwilling to reduce the charge to a misdemeanor, and her defense to the charge would be that her acts were not child endangerment. After discussing the terms of the negotiated plea with Jones, defendant was amenable to the agreement.

The trial court (Dawson, J.), denied the motion, finding defendant’s plea was knowing and voluntary, and Jones both discussed the case with defendant and did not render ineffective assistance in obtaining the plea agreement for her.

## **DISCUSSION**

### **I**

Defendant contends she should have been permitted to withdraw her plea because she was not informed of a valid defense to the initial charge of child endangerment, and because the factual basis of the plea was insufficient. We disagree.

#### **A. Withdrawal of Plea—Inadequate Advice**

Where, as here, the defendant was represented by counsel at the time of the no contest plea, the court has discretion whether to permit withdrawal of the plea upon a showing of good cause. (*People v. Cruz* (1974) 12 Cal.3d 562, 566.) “Mistake, ignorance or any other factor overcoming the exercise of free judgment is good cause for

withdrawal of a guilty plea. [Citations.] But good cause must be shown by clear and convincing evidence.” (*Ibid.*) The trial court’s decision to deny a motion to withdraw a plea will not be overturned on appeal absent a showing of a clear abuse of discretion. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.)

Defendant claims good cause is established because she was never informed that criminal negligence was an element of felony child endangerment involving passive misconduct, and she was therefore unaware of a valid defense to the initial charge. Asserting that “[a] jury would never accept” that her conduct amounted to criminal negligence, defendant contends she would not have accepted the plea had she been properly informed.

Defendant signed a provision in the plea form stating that she discussed the case with counsel and later admitted reading the form. Her counsel for the plea, Jones, testified that he discussed the initial charge with her, as well as the proposed plea agreement. The initial complaint informed defendant of the charge of child endangerment; Jones discussed with her the alternative of pleading to child abandonment, and the information was amended to include such a charge when defendant entered her plea. In short, substantial evidence supports the trial court’s implicit finding that defendant was properly advised of the case against her and the consequences of her plea.

Defendant does not and cannot identify any decision requiring the court taking the plea to inform the defendant of every element or possible defense to the crime that the defendant pleads to. Where, as here, the defendant admits discussing “my rights, my defenses and the possible consequences of my plea” with her counsel, the court can find that the defendant’s plea is knowing and may therefore accept her plea. Due process requires no more.

Defendant’s claim fails for another reason, a misunderstanding of the strength of the People’s case.

Section 273a, subdivision (a) states, in pertinent part: “Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer . . . unjustifiable . . . mental suffering . . . shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.” In cases involving the indirect infliction of harm, the mens rea is criminal negligence, that is, “ ‘ “aggravated, culpable, gross, or reckless” ’ ” negligence that is such a departure from ordinarily prudent conduct “ ‘ “as to be incompatible with a proper regard for human life . . . or an indifference to consequences.” ’ ” [Citation.]” (*People v. Valdez* (2002) 27 Cal.4th 778, 788.)

Defendant’s contention that a jury would *never* find she was criminally negligent under these facts is simply wrong. Defendant left her four-year-old son at home to fend for himself while she drove to another town to pick up her daughter from day care. It took her 31 minutes to get back home, and the officer estimated that in light of traffic delays from road construction, she could have been gone for at least an hour. Her son left the house and was found crying outside by a neighbor. But for the kindness of a good neighbor, and the happenstance of the neighbor’s leaving his home when the child was outside, defendant’s son could have wandered the streets much longer and been exposed to even greater danger. That defendant’s home was otherwise appropriate for her children is irrelevant; leaving a small child unattended at home for an extended time demonstrates an indifference to the considerable danger such action poses to the child. There is ample basis for a finding of criminal negligence. (Cf. *People v. Sutton* (1976) 65 Cal.App.3d 341, 348 [small children left alone in the defendant’s apartment supported probable cause to arrest for child endangerment].)

Defendant was informed of the charge against her, the case against her, and the related offense she pleaded to. We conclude that her plea was knowing and voluntary.

## **B. Factual Basis for Plea**

Defendant asserts her plea was invalid because the factual basis would not support a conviction for child abandonment.

Section 1192.5 requires a trial court, upon entry of a plea of guilty or nolo contendere, to “cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a factual basis for the plea.” “The extent of the inquiry must be left to the discretion of the trial court, but it should develop the factual basis on the record. [Citation.] The trial court should ask the accused to describe the conduct that gave rise to the charge, make specific reference to those portions of the record providing a factual basis for the plea, or elicit information from either counsel. [Citation.]” (*People v. Wilkerson* (1992) 6 Cal.App.4th 1571, 1576.)

Defendant contends the trial court erred because the factual basis for the plea, the police report, does not support the necessary criminal negligence for child endangerment or the intent to abandon for child abandonment. Regarding child endangerment, the factual basis does not have to support a dismissed offense. In any event, the police report supports criminal negligence.

Section 271a states that “[e]very person who knowingly and willfully abandons, or who, having ability so to do, fails or refuses to maintain his or her minor child under the age of 14 years” commits the crime of child abandonment. Abandoning a child means “intentionally failing to supply the needs of the child[.]” (*People v. Stephens* (1938) 30 Cal.App.2d 67, 70; accord, *People v. Ryan* (1999) 76 Cal.App.4th 1304, 1315.)

The purpose of inquiring into the factual basis for a plea is to “ ‘ensure[] that the defendant actually committed a crime at least as serious as the one to which he is willing to plead.’ [Citation.]” (*People v. French* (2008) 43 Cal.4th 36, 50; see § 1192.5.) It “protects against the entry of a guilty plea by an innocent defendant” and “addresses broader issues such as the voluntariness of the plea and a knowing decision to plead guilty.” (*People v. Marlin* (2004) 124 Cal.App.4th 559, 571 (*Marlin*).)



“The trial court need not obtain an element-by-element factual basis but need only obtain a prima facie factual basis for the plea. [Citations.] ‘[A] trial court possesses wide discretion in determining whether a sufficient factual basis exists for a guilty plea. The trial court’s acceptance of the guilty plea, after pursuing an inquiry to satisfy itself that there is a factual basis for the plea, will be reversed only for abuse of discretion.’ [Citation.]” (*Marlin, supra*, 124 Cal.App.4th at p. 572.)

The police report shows defendant left her small child at home for an extended time, allowing him to leave the house on his own and wander outside, where he had the good fortune to be found by a neighbor. By leaving the child alone for a significant time, defendant thereby failed to supply his needs. This establishes a prima facie case for child abandonment.

## II

Defendant contends she should have been allowed to withdraw her plea on the basis of her counsel’s ineffectiveness.

“To prevail on a claim of ineffective assistance of counsel, the defendant must show counsel’s performance fell below a standard of reasonable competence, and that prejudice resulted.” (*People v. Anderson* (2001) 25 Cal.4th 543, 569.) Defendant’s contention fails as she does not carry her burden of establishing substandard performance.

Defendant claims counsel was deficient in failing to apprise her of the criminal negligence element of child endangerment and the weakness of the prosecution’s evidence regarding that element. As we have already held, defendant was properly informed of the prosecution case and the proposed plea agreement. Moreover, the facts supporting criminal negligence are much stronger than defendant assumes. She also claims that counsel faltered in failing to obtain a proper factual basis for the plea. This reiterates her contention regarding the factual basis for the plea, which we rejected earlier.

We cannot find fault with the deal counsel obtained for defendant. The case against defendant was strong and he persuaded the prosecution to agree to a lesser charge that might allow defendant to retain her job. Under the plea, if defendant satisfied the terms of probation, she would serve no jail time and might get the charge reduced to a misdemeanor.<sup>3</sup>

### **DISPOSITION**

The judgment is affirmed.

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RAYE, P. J.

We concur:

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MAURO, J.

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MURRAY, J.

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<sup>3</sup> Defendant's claim that the child abandonment charge she pleaded to is "at least as serious" as the child endangerment charge in the original complaint is wrong. Felony child endangerment is punishable by two, four, or six years in state prison. (§ 273a, subd. (a).) Felony child abandonment is punishable by 16 months, 2 years, or 3 years in county jail. (§§ 271a, 1170, subd. (h)(1).)